

Phan (Migration) [2019] AATA 3210 (4 April 2019)

DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANT: Ms Thi Thu Huong Phan

CASE NUMBER: 1714511

DIBP REFERENCE(S): BCC2014/1397314 CLF2015/44207

MEMBER: David Barker

DATE: 4 April 2019

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Partner (Residence) (Class BS) visa.

Statement made on 04 April 2019 at 5:26pm

1. **CATCHWORDS**

2. *MIGRATION – Partner (Residence) (Class BS) – Subclass 801 (Partner) – genuine and continuing relationship – financial aspects – contrived relationship – no shared assets – insufficient evidence – decision under review affirmed*

3.

4. **LEGISLATION**

Migration Act 1958 (Cth), ss 5F, 65, 362A, 375A

Migration Regulations 1994 (Cth), r 1.15A (3), cl 801.221

CASES

He v MIBP [2017] FCAFC 206

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

5. This is an application for review of a decision made by a delegate of the Minister for Immigration on 5 July 2017 to refuse to grant the applicant a Partner (Residence) (Class BS) visa under s.65 of the *Migration Act 1958* (the Act).
6. The applicant applied for the visa on 6 June 2014 on the basis of her relationship with her sponsor. At that time, Class BS contained only one subclass: Subclass 801 (Partner). The criteria for the grant of this visa are set out in Part 801 of Schedule 2 to the Migration Regulations 1994. The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
7. The delegate refused to grant the visa on the basis that the applicant did not satisfy cl.801.221 because they were not satisfied that the applicant and sponsor were, at the time of their decision, in a genuine and continuing relationship.
8. The applicant appeared before the Tribunal at an initial hearing on 4 December 2018 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Vietnamese and English languages.
9. The applicant appeared before the Tribunal at a further hearing by telephone from Vietnam on 27 February 2019 to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor. The Tribunal hearing was conducted with the assistance of an interpreter in the Vietnamese and English languages.
10. The applicant was represented in relation to the review by her registered migration agent.
11. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

12. BACKGROUND

13. The applicant is a national of Vietnam and is 28 years of age. Statutory declarations provided by the applicant indicate she first arrived in Australia on 18 July 2013 on a student visa and then met the sponsor 11 days later at one of his friend's birthday party. She reports they became a couple on 21 August 2013, commenced living with each other on 18 November 2013 and that the sponsor proposed marriage to her on 21 March 2014. The applicant and sponsor were married on 10 May 2014.
14. The sponsor was born in Vietnam and is 31 years old. The sponsor first arrived in Australia in 2004 on a student visa. He was granted Australian citizenship in 2012.
15. The applicant was granted a Provisional Partner visa (Subclass 820) on 16 May 2015.
16. The delegate's decision record, a copy of which was provided to the Tribunal with the review application, states that the Department received information on 10 July 2015 alleging that the applicant entered into a contrived relationship with the sponsor for the sole purpose of gaining entry into Australia. The delegate noted that information received stated that:
 - the sponsor was paid \$60,000 to \$80,000 for sponsoring the applicant;

- the applicant lives with her sister at a residence in Frazer Avenue, Lurnea; and
- the sponsor is engaged to a Ms Victoria Nguyen and that they plan to marry later.

17. Departmental officers conducted a home visit on 1 March 2016 to the applicant's nominated address at Mumford Road, Cabramatta (the Cabramatta property). The applicant was not present at the time of the visit and the sponsor, who was present, was interviewed by Departmental officers. The applicant was sent a natural justice letter by the Department on 20 April 2016, inviting her comment on the allegations and information obtained by the Department during the home visit on 1 March 2016. The Department received a response from the applicant on 9 May 2016.

18. In summarising why they determined the applicant was not, at the time of their decision, in a genuine and continuing relationship with the sponsor, as required under sections 5F(2)(c) and 5CB(2)(b) of the Act and that they were in a contrived relationship for the sole purpose of the applicant obtaining permanent residency in Australia, the delegate made the following comments:

19. I have taken into account the information available to me, the allegations received by the department, the answers provided by your sponsor during the home visit, the observations of the officers conducting the home visit, and your subsequent response. Based on this information, I have concluded that you and your sponsor are not cohabitating together and that you are not in a genuine relationship. I do not accept the explanations provided in your response received on 9 May 2016 regarding the unfavourable information before the department and the observations made by departmental officers during the home visit.

20. In your response received on 9 May 2016, you claimed that you and your sponsor had decided to move to your sister's house prior to the home visit as your room was getting too small for you. You stated that you had begun moving some of your "*clothes, electronics, documents and other belongings*" there as you wanted "*security*", and that your room in your current house did not have a lock. During the home visit, your sponsor claimed to have purchased the house at [street number identified] Mumford Road four years ago with the money his parents had sent to him. I find it unusual that you and your sponsor would move out of the house simply because the room you share did not have a lock in the house he owns. A more logical response to this matter would be to install a lock for your bedroom rather than moving to a completely different residence. Your implausible explanation raises significant concerns about your credibility and the veracity of your claims. You have also been unable to provide a reasonable explanation why your sponsor's belongings were not moved to your sister's house and why only your personal belongings and clothing, in particular your work uniforms, were moved to your sister's house when you claim that you were still living at [street number identified] Mumford Road. I note that you and your sponsor continued to list [street number identified] Mumford Road as your intended address on your incoming passenger card in May, March and November 2016. It would be expected that [street number identified] Frazer Avenue, Lurnea would be listed as your intended address in Australia on your incoming passenger cards if you are residing at that address.

21. I have considered your response addressing the concerns raised during the interview with your sponsor at the time of the home visit. I have given significant weight to the allegations before the department, and find that there is substance to them. Despite your denial of the allegations, the information your sponsor provided during the home visit strongly indicates that you do not live with your sponsor and that your relationship with your sponsor is contrived for the purposes of obtaining Australian permanent residency. I therefore do not consider you to be a credible witness, and I have significant doubts about the veracity of the claims you have made regarding the genuineness of your relationship with your sponsor.

22. In your response received on 9 May 2016, you and your sponsor claimed that you "*text regularly and continually update each other*" about your daily events. I note that the last message exchanged between you and your sponsor was four days prior to the home visit

where your sponsor advised you that he had purchased a car for \$60,000 and that he had given his old car to his sister. You stated that you and your sponsor had “*contemplated on purchasing a new car*”, that the text messages were “*merely a joke*”, meant to express your thoughts “*that it was a nice car*”.

23. Given the allegations received, the observations made by departmental officers, and the information your sponsor provided during the home visit, I conclude that you and your sponsor are not living together and that you do not intend to build a long-term relationship with each other.

24. Prior to and at the hearing the applicant’s representative provided additional documents to the Tribunal including but not limited to the following:

- Written submissions from the applicant’s representative dated 12 November 2018, 27 November 2018 and 30 November 2018
- A written statement from Thi Than Huynh, dated 28 November 2018;
- A written statement from Thi Hong Ngan Ly, dated 28 November 2018;
- A translated written statement from Huynh Van Hong and Nguyen Thaanh Binh;
- A translated written statement from Van Chin Phan and Thi Sanh Nguyen;
- A statutory declaration from Thi Nhu Ngoc Phan, dated 28 November 2018;
- A statutory declaration from Thuc Minh Phan, dated 28 November 2018;
- A statutory declaration from Cuc Thi Phan, dated 26 November 2018;
- Annotated untranslated text messages.
- Copies of the applicant’s Income Tax Returns for the 2016 and 2017 income years;
- Correspondence addressed to the applicant at the Cabramatta property, dated 22 October 2018, in relation council rates owing on her St Albans investment property;
- Copies of the sponsor’s Income Tax Returns for the 2016 and 2017 income years;
- Copies of the sponsor’s ANZ Bank account statements covering the June to November 2018 period;
- Copies of the parties’ joint Commonwealth Bank (CBA) account statements covering the May to August 2018 period;
- Copies of the applicant’s NAB account statements covering the August 2018 to October 2018 period;
- Travel records;
- Photographs;
- Correspondence addressed to both parties, from the Salvation Army, addressed to the Cabramatta property, dated 14 September 2018;

- A referral letter from the applicant's general practitioner to [a doctor], dated [July] 2018, for an opinion and management of the applicant following [medical results];
- The applicant's [test] results, dated [June] 2018;
- Correspondence addressed to the applicant at the Cabramatta property from Family Orthodontics, dated 5 April 2018 welcoming her as a new client;
- Correspondence addressed to the applicant at the Cabramatta property from NSW Transport, dated 18 September 2017;
- Correspondence addressed to the applicant at the Cabramatta property from Service NSW, dated 21 June 2018;
- Vehicle registration papers addressed to the applicant at the Cabramatta property, regarding the July 2018 to January 2019 period;
- NRMA vehicle insurance papers addressed to the applicant at the Cabramatta property, regarding the October 2017 to October 2018 period;
- Correspondence addressed to the applicant at the Cabramatta property from Medibank dated 17 November 2017, regarding the applicant taking out a new private health insurance policy and further correspondence dated: 28 November 2017, 20 June 2018, 25 June 2018 and 1 July 2018;
- Correspondence addressed to the applicant at the Cabramatta property from Bupa, dated 16 March 2018, in relation to the issuing of a new Bupa card.
- Correspondence addressed to the applicant at the Cabramatta property from Bupa, dated 15 August 2018, in relation to the issuing of a new Bupa card;
- Correspondence addressed to the applicant at the Cabramatta property from CBA dated 4 May 2018 and 19 July 2018, in relation to the issuing of a replacement debit Mastercard.
- Correspondence addressed to the applicant at the Cabramatta property from NSW Government revenue section, dated 29 March 2018 and 9 April 2018.
- Correspondence addressed to the applicant at the Cabramatta property from First State Super, dated 16 March 2018;
- Correspondence addressed to the sponsor at the Cabramatta property from ANZ Bank, dated 17 July 2018 regarding his home loan repayments.
- Vehicle registration papers addressed to the sponsor at the Cabramatta property, regarding the June 2018 to June 2019 period;
- Electricity, Sydney Water, Fairfield City property rates and Optus bills addressed to the sponsor at the Cabramatta property;
- Correspondence addressed to the sponsor at the Cabramatta property from NAB, dated 25 October 2018, in relation to the issuing of a new NAB Visa debit card.

- Correspondence addressed to the applicant at the Cabramatta property from NAB, dated 18 September 2018, in relation to the issuing of a new NAB Visa debit card.
- NAATI accredited translation of selected text messages from messages copied from the sponsor's mobile phone on 1 March 2016;
- Correspondence addressed to the applicant at the Cabramatta property from the Salvation Army regarding a donation, dated Summer 2019;
- A letter from [Hospital 1] to the applicant, dated 4 February 2019, addressed to the Cabramatta property.

25. The s.375A certificate

26. In the departmental file, there are documents covered by a certificate issued under Section 375A of the Act. The Tribunal provided a copy of this certificate to the applicant and her representative and sought their comment or submissions regarding the validity of this certificate. The applicant indicated she had no comment to make with regard to this issue and that she wished to rely on the submissions from her representative. The representative indicated she had no concern as to the validity of the certificate. The Representative submitted that in the event the Tribunal was to rely on any of the information contained in documents covered by the certificate, she would request the particulars of that information be put to the applicant for her comment.

27. The Tribunal has taken this submission into account and considers the certificate issued under Section 375A to be a valid certificate, as the Tribunal is satisfied the disclosure of the information would be contrary to the public interest for the reason specified in the certificate, namely that their release could hamper lawful investigative methods utilised by the Department of Home Affairs in carrying out their role.

28. The Tribunal advised the applicant that the gist of the information contained in the documents covered by this certificate pertains to a site visit carried out at the Cabramatta property by Departmental officials in March 2016. The Tribunal explained that the document covered by the certificate is a report which includes information about the Department's investigation techniques and that it also includes information and findings about the relationship as a result of the site visit, which are discussed in detail in a natural justice letter sent to the applicant following this site visit and in the delegate's decision record.

29. Information not released to the applicant due to Australian Privacy Principle (APP 6)

30. The Tribunal noted that the applicant had requested access to documents under s.362A of the Act and that certain documents were not released as doing so would breach Australian Privacy Principle (APP 6). In the interest of procedural fairness, the Tribunal provided the applicant with the gist of this information, namely that some of the documents pertained to the allegation received by the Department that the parties were in a contrived relationship. The Tribunal noted this allegation was discussed in detail in a natural justice letter sent to the applicant in April 2016 and in the delegate's decision record. The Tribunal noted that other documents not released to the applicant included copies of incoming passenger cards, which are also referred to in the delegate's decision record and photographs of the exterior of the Cabramatta and Lurnea properties.

31. The representative's submission that the Department's decision to refuse the Subclass 801 visa application was invalid

32. The Tribunal received a submission from the representative on 12 November 2018 in which she contended the decision on 20 April 2016 to refuse the applicant a Subclass 801 visa may be invalid as the permanent second stage visa was not lodged. At the start of the hearing on 4 December 2018, the Tribunal noted that the delegate made their decision to refuse the Subclass 801 visa application in July 2017, not April 2016, but had taken the representative's submission to nonetheless pertain to the July 2017 decision. The representative submitted that the Department conducted the home visit and started investigating the applicant's circumstances in April 2016.
33. The Tribunal invited any further oral submissions that the representative wished to make in regard to this issue and the representative submitted that the Department's usual procedure is to undertake a second stage assessment of an applicant's qualification for a permanent residential partner Visa after a two year period. The representative submitted that the application for the partner Visa was lodged in June 2014 and that the delegate refused the visa without the applicant having the opportunity to provide documents that would normally have been associated with the second stage processing.

34. **TRIBUNAL HEARING**

35. *The hearing on 4 December 2018*

36. In relation to the current state of the parties' relationship, the applicant gave evidence that she and the sponsor continue to live together happily as husband and wife.
37. The Tribunal explained to the applicant that whilst significant consideration would be given to the current aspects of her and the sponsor's relationship, due to the seriousness of the findings of the delegate, in relation to the parties being in a contrived relationship for the purpose of facilitating the applicant gaining permanent residency in Australia, she would be given the opportunity to provide oral evidence in relation to issues raised in the delegate's decision record.
38. In response to an invitation to comment about the delegate's finding that the parties were in a contrived relationship in which the sponsor was paid money to facilitate the applicant having a migration pathway to permanent residency in Australia, the applicant made the following comments:
- she and the sponsor are in a genuine spousal relationship;
 - the sponsor has a stable job and stable income;
 - she did not to give him any money for this marriage;
 - to suggest otherwise is a false allegation;
 - the sponsor has two other properties and comes from a wealthy family;
 - the sponsor was raised in Australia and studied here;
 - the amount that the sponsor is alleged to have received to enter into an allegedly contrived relationship, between \$60,000-\$80,000, is not that large an amount of money;
 - she and the sponsor truly love each other and they are in a genuine relationship;
 - she did not pay any money to the sponsor;
 - the sponsor is aware that if he was found to have entered a contrived relationship he would be convicted.
39. In response to an invitation to comment on findings the delegate made on the basis of text messages between the applicant and sponsor that were recorded from the sponsor's phone

during the Department's home visit in March 2016 and subsequently translated by a Departmental officer, the applicant asked the Tribunal to specify what particular messages she was asked to comment about. The Tribunal clarified it was providing her with the opportunity to make any further comment she wished to make, further to what is covered in statements or submissions provided to the Department and Tribunal regarding this issue. The applicant then gave evidence that she did not think the translation of the text messages was done correctly and that there was a misunderstanding of the messages sent between her and the sponsor.

40. In response to the alleged text message from the applicant to the sponsor in which she is reported to have written words to the effect of '*lots of girls will be after you*', the applicant said this was just a joke and that she and the sponsor make jokes and that this is just normal.
41. In response to the delegate's comments that the text messages appear to indicate the applicant and sponsor were coordinating travel plans to look as though they were a couple travelling together, the applicant said that at that time they had a plan to travel to Vietnam as she had been in Australia for two years without returning to Vietnam. She said they planned to visit their families and that whilst they had decided which month they wished to travel, they had not set specific dates for their trip. The applicant said she was texting the sponsor so that she could set more specific dates for their trip so that she could apply for leave from her work.
42. The applicant gave evidence that the sponsor has a good income and that he purchased the car referred to in the messages from his employment earnings. She said he was unsure of what brand of car to buy and that he finally decided on that particular sort of car, she said that it was his money and it was his decision what sort of car he bought. She said that is just normal.
43. The Tribunal noted that the representative's written submissions contend that as the text messages discussed by the delegates were not translated by an accredited translator they could not be relied on as having being accurately translated. In light of this the Tribunal noted that the applicant had not herself provided a translation of the aforementioned text messages from a suitably accredited translation service. In response to this comment the applicant said she did not know that she needed to provide such a thing.
44. In relation to the delegate's discussion of the Departmental officers finding no specific identification documents, clothes or other possessions belonging to the applicant at the Cabramatta address during their home visit in March 2016, the applicant made the following comments:
 - At that time she was in the process of getting ready to move to a granny flat owned by her older sister in Lurnea;
 - On the particular day of the Department's visit she had free time and she had packed up most of her belongings but she is sure she still had some clothes at the Cabramatta property;
 - She had been removing her personal items gradually and had just not removed everything on the day of the visit.
45. In relation to the delegate's comments that whilst there were some clothes and items likely used by a female at the Cabramatta address, at the time of the Department's home visit, those items could not be clearly demonstrated to belong to the applicant rather than to another woman, the applicant said that the items referred to by the Department in her opinion belonged to her. She said that she does not put names on her items of clothing to prove they are hers.

46. In relation to the delegate's comments that the applicant had not provided a plausible explanation for why she kept her work uniforms at her elder sister's home, the applicant said she does not know how the Department can be certain her work uniforms were at her sister's home. She said she only has two work uniforms and sometimes she keeps them in her car when she goes to various places.
47. The applicant confirmed that her elder sister owned and resided at the Lurnea property referred to by the Department. She said her sister lived at this address in the period from 2013 until she sold it and moved to another address in Green Valley, NSW, in or around July 2016.
48. The applicant said that she moved to live in a granny flat at her sister's Lurnea property for a very short period between March 2016 and the end of May 2016, and then returned to the Cabramatta property.
49. The Tribunal put to the applicant that her claim to have not been living at the Cabramatta property for a brief period of time, which happened to correspond with the unannounced home visit by Department officers, was a somewhat convenient coincidence giving rise to a concern regarding the reliability of her evidence in relation to this claim. The Tribunal made it clear to the applicant that it had not reached any conclusion on this issue and invited her comments. The applicant said her older sister offered her and the sponsor the opportunity to move from his home to a granny flat behind her property in Lurnea. She asked how she would know if this was a coincidence and said that where they were staying was small and that in the granny flat at her sister's home they had more space in which to live. She said they stayed there for some time but then her sister decided the property price was suitable for her to sell the Lurnea property and so she and the sponsor had no choice but to move back to the Cabramatta property.
50. The Tribunal asked the applicant why, given the Cabramatta property was owned by the sponsor, they would not just have changed arrangements within this household if they were concerned their living arrangements there were getting too small. The applicant said that whilst the Cabramatta property was a four bedroom house, the bedrooms were all quite small and it was not practical to change the internal layout of the property as at that time all four bedrooms were occupied, with her and the sponsor sharing one room and the sponsor's younger sister occupying another bedroom. She said two of the sponsor's friends occupied the third bedroom and their child occupied the fourth bedroom.
51. The Tribunal put to the applicant that her concession that she was residing with her sister in Lurnea gives weight to the reliability of the information provided in the allegation the Department received in 2015 regarding the contrived nature of the parties' relationship. In response to this comment the applicant reiterated that on the particular day of the Department's home visit she was not at home. She said that she did not mean to say she was not at that stage living at the Cabramatta address. She said in relation to the allegation that her husband was in a relationship with another person, she queried the name of that person. The Tribunal drew her attention to the delegate's decision where the identity of that person was apparent. The applicant said that woman was the sponsor's ex-girlfriend and that they went out with each other for three or four months in 2013 before she and the sponsor met. She said the sponsor and that woman tried to get to know each other but realised they were not compatible.
52. In relation to the delegate's comment that the sponsor was not able to provide the actual date of the parties' marriage, or identify the actual suburb where the applicant's elder sister was living, when he was interviewed during the home visit in March 2016, the applicant said the Lurnea property where her elder sister lived was very close to the Cabramatta property and that the sponsor had mentioned the need to travel along Hoxton Park Road to get there,

which is true. The applicant said she thinks a lot of people cannot recall the date of their marriage and that she does not know why the sponsor could not recall the date of the marriage on the particular day he was interviewed during the Department's visit.

53. The current circumstances of the parties' relationship

54. In relation to the financial aspects of the parties' relationship, the applicant gave evidence that he has no joint ownership of real estate or other major assets. She said the Cabramatta property is owned by the sponsor and that the mortgage over this property is in his name. She said that the sponsor also owns two other investment properties, which were partly purchased by funds sent to him from his family. She said that she and the sponsor each own a car, which is registered in their own names as they were not allowed to own these vehicles together. The applicant said the sponsor paid for her car and that it has a value of around \$11,000. When asked if she could produce any documentary evidence in support of this claim, she said that she has no evidence as the sponsor paid for the car with cash. In response to the Tribunal asking as to whether there would have in any event been some form of receipt or evidence of this financial transaction, the applicant said she could not provide any documentary evidence in support of this claim.
55. The applicant gave evidence the parties have no joint liabilities and that she and the sponsor have not pooled their financial resources, especially in relation to major financial commitments, to any significant extent because she has only been working on a part-time basis and her salary is very low. The applicant said they have not tried to put her name on any applications for finance which the sponsor has made as due to her low income they were concerned that this may affect the sponsor's ability to get loans. The applicant said neither she nor the sponsor have any legal obligation in respect of each other.
56. In relation to the basis of sharing of day-to-day household expenses, the applicant said the sponsor is responsible for bills associated with the Cabramatta property, including paying the home loan and also council rates, water and electricity bills. She said that her salary pays for food, groceries and other shopping.
57. In relation to the nature of their household and the basis on which they share responsibility for housework, the applicant said she does the cooking, tidies the house and washes the clothes. She said the sponsor hangs out the washing, mows the lawn and sometimes assists her to wash the dishes after meals.

58. The second hearing on 27 February 2019

59. Sponsor's evidence

60. The sponsor gave evidence that there is no basis to the allegation that he was paid between \$60,000 and \$80,000 to enter into a contrived relationship with the applicant for the purpose of facilitating her halfway to permanent residency in Australia. He said that he and the applicant love each other and that he has studied and worked full-time in Australia and developed his own savings. The sponsor said that his family in Vietnam have assets and are capable of transferring money to Australia so he can purchase property and that there is no need for him to receive the alleged payment.
61. The Tribunal asked the applicant if it is correct, as was claimed in a document provided to the Department that the white Audi motor vehicle, worth \$60,000 was purchased by him with money sent to him by his parents. The sponsor reiterated that he paid for the car from money transferred to him by his parents in Vietnam and from money he earned from full-time work in Australia. The Tribunal put to the sponsor that this was not consistent with what is declared in a statutory declaration, dated 22 April 2016, which at Paragraph 12 states that

the car was purchased by money sent to him from his parents. In response the sponsor said that he purchased the car with money earned from his employment. In response to the Tribunal again putting to him that this was not consistent with what is claimed in the statutory declaration, dated 22 April 2016, the sponsor said his parents transferred money to him, which went into his bank account, along with money he had in this account from his employment earnings. He said that this was all his money. The Tribunal asked the sponsor why this was not what was explained in the statutory declaration and in response the sponsor said this was because the money transferred to him from his family became his money. The Tribunal then put to the sponsor that in the initial hearing the applicant gave evidence that he paid for the car from his work salary. The sponsor said there may have been a misunderstanding in the previous hearing and that when the applicant said he paid for the car from his work and earnings, she might have meant he paid for the car from his money.

62. The Tribunal noted that it has now been provided with a NAATI translation of some of the text records that were copied from his mobile phone when the Department visited the Cabramatta property in March 2016. The Tribunal noted that the text messages did not include a translation of a text interchange between him and the applicant allegedly regarding the purchase of a house together. The Tribunal noted that this particular text interaction was discussed in Paragraph 15 of the statutory declaration signed by him on 22 April 2016 as an example of where the Department had twice incorrectly interpreted that text message.
63. In response to a question as to why this text interchange was not included in the NAATI translated text records that have now been provided to the Tribunal the sponsor said he does not know why the Department twice inaccurately interpreted that text message. He said that the only thing discussed by him and the applicant in the text messages that were copied by the Department were plans to purchase travel tickets for them both. He said that in statutory declarations that he had signed, he had never mentioned a text message that referred to the purchase of a house. He reiterated that the text messages copied by the Departmental officers only dealt with interactions between him and the sponsor regarding the purchase of airline tickets for their planned trip to Vietnam together.
64. The Tribunal again referred the sponsor to Paragraph 15 of the statutory declaration signed by him on 22 April 2016 and in response he said that he is unaware of what the Tribunal was referring to and that he is sure that he did not mention any communication about purchasing a house and that he had only referred to text messages regarding the purchase of airline tickets.
65. As to the basis upon which he and the applicant pay for their regular living and household expenses, the sponsor said that because he earns significantly more than the applicant, he pays the various bills and the applicant pays for small shopping and food items.
66. With respect to the nature of their household arrangements, the sponsor said that both he and the applicant work full time and that she does the cooking, meal preparation and washes their clothes, whilst he helps her wash dishes, and hangs out the wet washing and also mows the grass. He said that they are living in the Cabramatta property, along with his younger sister and another couple and their daughter.
67. With regard to the sort of social activities he and the applicant plan and undertake together, the sponsor said on days they don't eat at home they usually go out and have meals together. He said this is particularly so on Sunday and Monday, which are their common days off. He said that on these days they typically have lunch or the evening meal out and also shop together.

68. In response to a question as to who, apart from members of their respective families, would be aware that they are a married couple, the sponsor said that NSW Births, Death and Marriages, their tax agent and friends are all aware of their marriage.
69. The Tribunal asked the sponsor if he wished to comment upon the concerns raised by the delegate, which is that he could not, when interviewed by the Department in March 2016, recall the date on which he and the applicant were married. In response the sponsor said this was because the delegate came into their home suddenly and without prior notice, which caused him trouble with his memory. He said he lost his confidence and could not initially remember the correct date.
70. The Tribunal asked the sponsor if he had been in a relationship with a person referred to by the delegate, Ms Victoria Nguyen. The sponsor said that this was an old girlfriend that he knew before he met the applicant. He said that he knew her about March, April or May 2013 and denied that they were at any stage engaged to marry. He said that he has had no contact with Ms Nguyen since about May 2013.
71. In relation to another concerns raised by the delegate, which is that there were no identifiable documents, clothes or possessions belonging to the applicant at the Cabramatta property when the Department conducted the site visit in March 2016, the sponsor said he had already explained to the delegate that they were moving to a granny flat at his sister-in-law's home. He said that at the time the Department visited the Cabramatta property he had already moved the applicant's clothes and other possessions to the other location.
72. In response to the Tribunal asking the sponsor what he would like to say about his commitment to the relationship with the applicant, he said that the applicant and he love each other and that they have passed through a long period of time together, having been in a relationship since 2013. He said their love is even stronger now and that they have made plans for the future. He said that if she gets a permanent residency they have contemplated setting up a new business so they could work together and also have a baby together.
73. When the Tribunal asked if the sponsor wished to say anything else, he asked that the applicant's difficult current circumstances be taken into account. He said that she requires medical follow-up at [Hospital 1] but they are now in Vietnam and she does not have a bridging visa allowing for return to Australia for the necessary follow-up and treatment at the hospital.
74. *Applicant's response to evidence provided by the sponsor*
75. The applicant said that the sponsor has clearly answered all the concerns put to him. She said that with regard to the alleged text messages regarding buying a house together, neither she nor the sponsor ever mentioned that issue in any text messages, or in statutory declarations they had signed. She asked that the Tribunal consider all of the evidence, including the evidence which has been provided since the last hearing.
76. *Further evidence provided by the applicant at the second hearing*
77. The Tribunal sought clarification of the medical evidence which the applicant has provided since the previous hearing. The applicant confirmed she has a [medical condition] which requires follow-up treatment so that she does not develop [an illness] and that she is on a waiting list to undergo this procedure at [Hospital 1] and may be contacted at any time. She said for various reasons she returned to Vietnam without a bridging visa which provided her return rights to Australia and now she cannot return to Australia. She said that she is worried she will not be able to access the medical treatment she needs. She said that she also was

expected to go back to her job on 22 February 2019 but is now stuck in Vietnam and that she is worried she may lose her job.

78. In summarising her claims, the applicant said that the sponsor's family is wealthy and that to them the alleged payment to the sponsor of \$60,000-\$80,000 is of no consequence. She said that she and the applicant have been living together for five years, working and paying tax in Australia and that the allegation that the sponsor would enter into a contrived relationship with her for a \$60,000-\$80,000 payment is unfair.
79. With respect to the social aspects of her relationship with the sponsor, the applicant said she was sure that official paperwork, such as hospital records, would have the parties recorded as married and provide the sponsor as her contact person.
80. The applicant said she and the sponsor go out for meals regularly and also visit her elder sister, who lives in Melbourne. She said they walk hand in hand when they are together in the community, like a normal married couple. With respect to photographs she has provided with her review application she said that amongst other things, they show her and the sponsor having a meal with a niece and nephew. She said they also participate together in charitable activities and when asked to elaborate upon this joint activity, she explained that they have made online donations to the Salvation Army.

81. *Representative oral submissions at the second hearing*

82. The representative referred the Tribunal to folios 100, 102 and 117 of the Departmental file and noted that at folio 117 an email explains that the text messages were translated by Vietnamese speaking departmental officers. The representative noted that the translation provided at folio 102 includes the phrase '*we can buy a house together if there's a need, is your sister going back as well?*', whilst the translation provided at folio 100 is different in that a text message marked '1' is translated as '*can you check the dates and buy the tickets together. Does your sister coming along too?*' The representative submitted that the applicant and sponsor never spoke about or discussed by text the purchase of a house together and that the latter translation at folio 100 of the Departmental file should be preferred.
83. The representative submitted that in order for the applicant to be granted the visa, the Tribunal needs to be satisfied both at the time of application and at the time of decision that the couple are in a genuine relationship. She submitted that there are clearly errors in the delegate's decision record as the case officer relied heavily on translations of text messages between the applicant and sponsor that are incorrect. The representative submitted that the Tribunal now has before it the correct translation of some of these text records and that also in the freedom of information record there is evidence of substantial funds having been transferred to the sponsor by his family in Vietnam. She submitted that over \$300,000 was transferred to the sponsor by his parents and that he also had a substantial amount of money in his bank account from his own earnings.
84. The representative submitted that the visa cannot be refused on the basis of the allegation that the parties are in a contrived relationship because the evidence supporting any such contention is false. The representative submitted that the sponsor is an educated person who came to Australia as a student. She said that the sponsor understands the consequences of entering into a contrived relationship and that the allegation is false because the sponsor has no incentive to have entered into such an agreement. The representative submitted that the parties have now been in a loving relationship for over four years and that at the present time the applicant is not physically well.

CONSIDERATION OF CLAIMS AND EVIDENCE

85. Was the Department's decision to refuse the Subclass 801 visa application invalid?

86. The Tribunal first considered the representative's submission that the decision on 20 April 2016 to refuse the applicant a Subclass 801 Permanent Partner visa may be invalid as the permanent second stage visa was not lodged at the time the Department commenced their review of her entitlement for this visa. The representative submitted that the delegate refused the visa without the applicant having the opportunity to provide documents that would normally have been associated with the second stage processing of a Subclass 801 Permanent Partner visa application. The Tribunal notes that the representative's submissions in relation to this claim refer to an incorrect date upon which the delegate for the Minister refused the Subclass 801 visa. This occurred on 5 July 2017, not as claimed by the representative on 20 April 2016.
87. The Tribunal has nonetheless considered the representative's submission that appears to contending that the delegate's refusal decision is not valid.
88. As a first step, the applicant would first need to have a valid visa application for it to be able to be refused. Under the two-stage partner visa process applicants lodge the one combined application for both the Subclass 820 Temporary Partner and Subclass 801 Permanent Partner visas, as they apply for the temporary and permanent visas at the same time and on the same application form (Form 47SP). No new form is required to be lodged for second stage processing for the Subclass 801 Permanent Partner visa. This is evidenced by the Schedule 1 requirements for the Subclass 820 Temporary Partner visa – Item 1214C(3)(a), which states that the application must be made at the same time and place as an application for a Subclass 801 Permanent visa.
89. Furthermore there is no visa application charge (VAC) for the Subclass 820 Temporary Partner visa under Schedule 1, Item 1214C(2) as the combined UK820/BS801 application attaches the VAC to the Subclass 801 Permanent Partner visa (Schedule 1, Item 1124B(2)). As the applicant makes a combined application for the UK820/801 at the same time and on the same form the applicant pays the Subclass 801 Permanent Partner visa VAC at the time the combined application is made. As such the applicant did lodge the Subclass 801 Permanent Partner visa application when she lodged the Subclass 820 Temporary Partner visa, as it was a combined application and she would have already paid the VAC as well to confirm this.
90. Clause 801.221(2)(d) of the Regulations requires, subject to subclauses (6A) and (7) that at least two years have passed since the application was made. The visa application was lodged on 6 June 2014, meaning by the time the Department refused the Subclass 801 visa, over three years had passed. Clause 801.221(2A) also imposes a temporal limit, two years having passed since a decision was made in relation to the Subclass 820 visa, but this only applies to cases where the Minister has intervened to grant the Subclass 820 visa, which is not the case in the present matter. In any event, cl.801.221(7)(a) provides that nothing in cl.801.221(2)(d) and (2A)(c) prevents the Minister refusing to grant a Subclass 801 visa less than two years after the application is made.
91. Accordingly the Tribunal is satisfied that the delegate's decision, dated 5 July 2017, to refuse the Subclass 801 Permanent Partner visa is a valid decision for the purposes of this review.

92. The issues to be considered

93. The Tribunal has noted the representative's submission that the Tribunal is required to determine whether the parties were in a genuine relationship at both the time of application and at the present time. Whilst such matters are a focus of the criteria that must be met for the Subclass 820 visa, the issue in the present case is whether the applicant and her sponsoring partner are in a genuine spousal or de facto relationship at the time of this decision. In making its findings, the Tribunal has considered the documents contained in the Department and Tribunal files and oral evidence provided by the applicant and sponsor during the hearing.

94. The allegation that the relationship is contrived

95. Whilst the issue before the Tribunal is whether the parties are in a genuine and continuing spousal or de facto relationship at the present time, I have noted the significant weight given by the delegate to allegations the parties' relationship is contrived for migration purposes, along with the results of a site visit to the Cabramatta property in March 2016, which includes screen shots of text communication between the parties copied from the sponsor's mobile phone during the site visit. I have reviewed the allegations and delegate's discussion of issues arising from the site visit. I have also reviewed the comments and responses made by the applicant and sponsor to concerns raised in a natural justice letter sent to the applicant by the Department in April 2016 and in comments and responses they have provided elsewhere to concerns arising from the unfavourable information and site visit. I have done so due to the seriousness of the allegations and because I need to determine what weight to give to the suggestion the parties' relationship is contrived and other concerns discussed by the delegate. I also consider it necessary to form a view as to the general reliability of the evidence provided by the parties in support of the applicant's claims.
96. In relation to the allegation the parties are in a contrived relationship for which the sponsor was paid money for his role in facilitating her gaining permanent residency in Australia, the applicant refutes this allegation and states the relationship is genuine, long standing and loving. She dismisses the contention the sponsor would be tempted by a payment of \$60,000 to \$80,000 to enter into a contrived relationship with her, describing the aforementioned amount as essentially trivial and insufficient for him to agree to a contrived relationship. She supports this claim through referring to the wealth of the sponsor's family and to his personal property assets in Australia. She also contends that the sponsor is aware of the serious consequences which could impact him if he entered into a contrived relationship.
97. I am not persuaded by the contention that \$60,000 to \$80,000 constitutes a small amount of money. Whilst the sponsor's family may have remitted considerable funds to him from Vietnam, up to an amount of \$300,000 as is referred to by the representative, it is reported he has used funds from his family to assist him purchase the Cabramatta property and two other investment properties in Australia. Notwithstanding this, I am not convinced the sponsor would have regarded an amount of \$60,000 to \$80,000 to be of no significance and I place no weight upon this claim, or the related claim that a fear of consequences if discovered to have entered a contrived relationship would have prevented the sponsor from agreeing to any such arrangement. This is because I am not satisfied the applicant has established why a \$60,000 to \$80,000 would not have provided the sponsor with an incentive to enter into the contrived relationship.
98. The delegate considered the lack of evidence that the applicant was residing with the sponsor at the Cabramatta property gave credence to the unfavourable information received in confidence by the Department. The information suggested the sponsor was engaged to another woman and that the applicant was living with her sister in the Lurnea property. I do not find convincing the oral evidence put forward by the applicant and sponsor and that contained in other documents provided to the Department and Tribunal, to explain the

absence of clothes, possessions or documents demonstrably belonging to the applicant in the Cabramatta property when the site visit took place in March 2016. Whilst not outside the realms of possibility, I find highly improbable the claim that the site visit just happened to take place on or around the days the applicant's possessions were taken from the Cabramatta property to her sister's home in Lurnea. This claim relies on a coincidental circumstance that I do not find persuasive.

99. I do accept as reasonable the applicant's claim as to having a limited amount of work uniforms, which she primarily stored in her car and I have not placed adverse weight upon this particular absence from the Cabramatta property.
100. In a statutory declaration, signed on 22 April 2016, the sponsor declared his belief that it is not uncommon or unusual that he could not recall the exact address of the applicant's sister. In a statutory declaration she signed on the same date, the applicant made a similar declaration. I acknowledge that Hoxton Park may be around nine kilometres from the Cabramatta property and Lurnea is around six kilometres in the same general direction. However given the claim the parties had been in the days or weeks preceding the site visit relocating the applicant's possessions to her sister's home, I do not find the explanation for why the sponsor was so unsure of the address convincing.
101. In their statutory declarations the applicant and sponsor declare their bedroom at the Cabramatta property was too small and lacked a lock. Whilst acknowledging the size of a room is a fixed factor, I am not persuaded why they could not, as was discussed in the delegate's decision, put a lock on the door so as to improve their sense of security, given the Cabramatta property is owned by the sponsor and any alterations to it were demonstrably within his authority to approve.
102. I accept the sponsor's concession that he was in the past involved with a person named Victoria Nguyen. I am not satisfied there is evidence to show that he continues in a relationship with this person and in light of the absence of any such evidence I have not placed any weight on the allegation that there is an ongoing relationship between the sponsor and this third person.
103. As to the concerns arising from the text messages that were copied from the sponsor's mobile phone, I am not satisfied that the parties have provided a convincing explanation as to why these text interactions are innocuous. In their statutory declarations, provided in April 2016 in response to the Department's natural justice letter, the parties claim the text messages were either inaccurately translated by Vietnamese speaking Departmental officers, or taken out of context. Whilst I acknowledge the messages were not translated by an official translation service, it is of concern to me that the messaging between the parties that has subsequently been translated by a suitably qualified NAATI translator comprises only a selective portion of the text interactions between the parties.
104. An example of text messages which were not covered by the NAATI translation are messages allegedly pertaining to discussion of *'buying a house together if needed'*, which are specifically highlighted in the parties' April 2016 statutory declarations as inaccurately translated messages. The parties' claim they never discussed buying a house together in their text messages. The representative submits that the message is translated differently in the two translations at folios 100 and 102 of the Department's file and that the translation on folio 100 should be preferred, as it does not refer to the alleged discussion of *'buying a house together if needed'*. The representative submitted the translation at folio 100 is accurate. However, given the applicant's previous claims in her statutory declaration, as to messages regarding this issue being inaccurately translated by the Department on both occasions, it is not apparent why the translation on folio 100 should be preferred to that on folio 102 and it is of concern that the applicant did not have these particular messages

officially translated to support her claim that they were previously inaccurately translated by the Department.

105. During the hearing the parties' gave consistent evidence that none of the text messages which were copied from the sponsor's mobile phone made reference to the possible purchase of a house, or anything else except discussion of their proposed travel to Vietnam together. They both denied that the sponsor made any reference to any such text message in statutory declarations which have been provided to either the Department or Tribunal. I do not accept the claim in relation to the sponsor not referring to the aforementioned text messages, as he demonstrably has at Paragraph 15 of the statutory declaration he signed in April 2016, as indeed did the applicant at Paragraph 16 of the statutory declaration she prepared at the same time. For reasons outlined in the preceding paragraph, I am not persuaded the text messages copied from the sponsor's mobile phone make no reference to the possible purchase of a house.
106. An example of text messages, which the applicant declares in her statutory declaration, were taken out of context, refer to messaging about planning for a trip to Vietnam, which the applicant describe as *'joking together to each other about going on a holiday together as a secretive couple having a affair'*. The selective NAATI translated text messages which the applicant has now provided to the Tribunal excludes this text message exchange and the applicant does not appear to be contesting the essential accuracy of the two Department translations, which respectively translate the exchange as *'it sounds like we are having an affair and planning for travelling... we are having an affair, you have a husband and also a boyfriend'* or *'way we are talking right now is like we are having an affair ... yes we are having an affair don't you think...you already married and also have a lover'*.
107. In my view the Tribunal has been provided with a selection of NAATI translated documents which exclude those which the applicant may perceive to be unfavourable to her claims. I acknowledge that text messages could be taken out of context, such as those highlighted by the applicant regarding travel plans, vehicle purchases and picking up mail. However, when considered cumulatively the text messages between the parties which were copied from the sponsor's phone in March 2016, in my view, raise concern as to the nature of the parties' relationship and provide support to the contention the parties are in a contrived relationship. In my view the parties' comments and responses regarding these text messages raise a general concern as to the reliability of their evidence.
108. The delegate concluded the parties were in a contrived relationship and in doing so considered that the evidence gathered in the Department's site visit to the Cabramatta property in March 2016 gave credence to the unfavourable information received by the Department as to the contrived nature of the parties' relationship. I have found the applicant's explanation for the concerns raised by the delegate and those raised during the hearings to be unconvincing. I am therefore of the view that weight should be given to the allegation that the parties entered into a contrived relationship and that the evidence provided by them cannot be regarded as reliable where it is not corroborated by credible third party evidence. I am also satisfied that concern exists as to the weight that can be accorded to evidence provided by the parties' relatives, as I do not regard them to be an objective source of information regarding the nature of the parties' relationship.

Whether the parties are in a spouse or de facto relationship

109. Relevantly to this matter, cl.801.221(2)(c) requires that at the time of this decision, the applicant is the spouse of the 'sponsoring partner', who must be an Australian citizen or Australian permanent resident or an eligible New Zealand citizen who was specified in the related Subclass 820 visa application as the spouse or de facto partner of the applicant. In the present case the applicant claims to be the spouse of the sponsor who is an Australian

citizen and was identified in the Subclass 820 visa application. On the evidence before it, the Tribunal is satisfied that the sponsor is the 'sponsoring partner' of the applicant.

110. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a) - (d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and sponsor's household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

111. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship. The Departments' file contains a copy of a NSW Registry of Births Deaths and Marriages Marriage Certificate which confirms the applicant and sponsor married in Parramatta, NSW on 10 May 2014.
112. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spouse relationship met?

113. Financial aspects of the relationship

114. *Is there any joint ownership of real estate or other major assets?*

115. The applicant gave evidence the parties have no joint ownership of real estate or other major assets. The applicant and sponsor have significant individual assets, with the sponsor owning two investment properties, referred to in his 2016 and 2017 ATO tax returns, respectively located in Warwick Farm, NSW and St Albans, NSW, and as well the property which the parties' claim is their primary residence, the Cabramatta property. The visa applicant's 2016 and 2017 ATO tax returns indicate she has an investment property in Ashcroft, NSW.
116. The parties each own a car, which is registered and insured in their own names. The applicant claimed the sponsor paid for her car, but when asked from where he sourced the funds to make this purchase she said he paid in cash but indicated she could not provide any documentary evidence in support of this claim and accordingly I place no weight upon it.

117. *Are there any joint liabilities?*

118. The applicant gave evidence the parties have no joint liabilities. The Tribunal accepts this evidence. She said that this was in part because of their concern her low income from part time employment would compromise the sponsor's ability to secure finance for assets he has purchased. There is no objective third party evidence to corroborate this claim and I have placed no weight upon it.

119. *As to the extent of any pooling of financial resources, especially in relation to major financial commitments*

120. The applicant gave evidence the parties have not pooled their financial resources, especially in relation to major financial commitments, to any significant extent. The Tribunal accepts this evidence but is not persuaded by her explanation that she has not done so because she has only been working on a part-time basis and her salary is very low. It is not apparent to me why the applicant could not pool her financial resources with the sponsor, proportional to her income earnings and other financial resources available to her.
121. There is no documentary evidence to support a contention the parties were at the time of application or at the time of this decision pooling their finances in relation to major or minor financial commitments.
122. *As to whether one person in the relationship owes any legal obligation in respect of the other*
123. The applicant gave evidence the parties have no legal obligations in respect of each other and the Tribunal accepts this evidence.
124. *As to the basis of any sharing of day-to-day household expenses*
125. The applicant gave evidence that the sponsor is responsible for bills associated with the Cabramatta property, including paying the home loan and also council rates, water and electricity bills. She said that her salary pays for food, groceries and other shopping.
126. This is not consistent with the representative's submission, dated 27 November 2018, which submits the parties operate a joint bank account, into which the applicant's employment earnings are deposited and from which they meet their day-to-day transactions and pay bills. The Tribunal has reviewed the bank statements provided with the review application, which provide the most recent picture of the parties' banking transactions. The statements from the parties' joint CBA account cover the May 2018 to August 2018 period. They support the claim the applicant's employment earnings were deposited into this account during that period and also show transactions where significant amounts are transferred in from a different CBA account (xx5250) and withdrawn in cash from an ATM on the same date. This is evidenced by transactions displaying this pattern on 10 August 2018 and 13 August 2018, where on each day \$2,000 was deposited and then withdrawn.
127. The joint account statements list expenses by category, such as '*home & renovation*' and '*Bills & utilities*' and '*Food & dining*', however with the exception of payments to Vodafone and Optus, it is not apparent what the expense transactions specifically refer to and I am not satisfied they demonstrate they reflect the parties' day-to-day household expenses, as opposed to the applicant's own expenses. Emblematic of this is where expenses are identified as groceries, such as on 30 May 2018, they are for relatively small amounts, on that occasion being \$34.99. This does not in my view reflect the usual amount required for a couple's grocery purchases and there are no significantly higher expenses at supermarkets which would be indicative of the more usual amounts spent in purchasing a couple's regular groceries.
128. The Tribunal was also provided with account statements from the parties' joint NAB account (xx1810), covering the period from August 2018 to October 2018. These do not categorise expenses to the degree evident in the CBA accounts, with most withdrawals identified as 'Huong Phan Notprovided'. The NAB statements show the applicant's employment earnings were going into this account from August 2018 and that they had increased somewhat to on most weeks exceeding \$700.
129. The Tribunal has reviewed account statements from the sponsor's individual ANZ account (xx0698), covering the June 2018 to November 2018 period, which have amounts deposited

consisting of the sponsor's employment earnings, amounts deposited in cash, such as \$5,000 on 9 August 2018, \$3,300 on 10 August 2018, \$1,600 on 15 August 2018, \$2,500 on 20 August 2018 and four deposits on 18 October 2018 at an ATM in St Albans cumulatively amounting to \$8,000. There are also deposits identified as 'Rent 51 Theodore' and a large amount transferred from the Bank of Queensland on 27 August 2018 amounting to \$295,556.50. There is no indication where this large amount or other small amounts came from, or for what purpose they were deposited into the applicant's account. I do however acknowledge the claims regarding the financial support provided by the sponsor's family in Vietnam and their assistance to him in acquiring the property assets he has in Australia.

130. Withdrawals from the sponsor's ANZ account reflect relatively minor amounts spent at Aldi supermarkets, insurance payments, some other sundry withdrawals, but mostly payments identified as going to the sponsor himself, either through ATM withdrawals or presumably transfer to other accounts held by the sponsor. It is not apparent what sort of policy the insurance payments refer to. There is also no indication of the sort of payments referred to by the applicant as being made by the sponsor, such as home loan, council rates or other utility bills being made from the ANZ account, which raises the concern that the sponsor operates other bank accounts which have not been made available for the Tribunal to consider.
131. A review of the correspondence provided with the review application shows the sponsor does have council rate notices and other utility accounts, in his name, addressed to him at the Cabramatta property. There is also an Optus bill, in the sponsor's name sent to the same address in March 2018.

132. *Assessment of the financial aspects of the parties' relationship*

133. After reviewing the available evidence, I accept the applicant's evidence as to the sponsor paying costs associated with the Cabramatta property, such as council rates and utility expenses and loan repayments. I note however that account statements which may have shown such payments have not been provided with by review applicant, which in my view gives rise to the concern the applicant has not been fully transparent about the parties' financial affairs. I acknowledge there is an indication of the sponsor's Optus account being paid from the parties' joint account and presumably the applicant's Vodafone account, but with the exception of those regular expenses, there is little indication the joint account is used to pay for the parties' household or other shared expenses.
134. There is little objective documentary evidence which indicates the financial aspects of the parties' relationship are at the time of this decision indicative of two people who have a mutual commitment to a shared life together. They have no shared assets, joint liabilities or financial obligations to each other. There is very limited documentary evidence in the form of bank account statements or other financial records to support the contention they pool their finances to any significant extent with respect to either major or minor financial commitments. The evidence as to the basis upon which they share day-to-day living expenses is not persuasive. The Tribunal finds the financial aspects of the parties' relationship do not support the contention they are in a genuine and continuing relationship.

135. **The nature of the household**

136. *Is there any joint responsibility for the care and support of children?*

137. The parties do not have children.

138. *As to the living arrangements of the parties*

139. The Tribunal acknowledges documents which have been provided to the Department and Tribunal show that both the applicant and sponsor have correspondence sent to them at the Cabramatta address and that they have both provided this as their address to a range of government agencies and private businesses, including, but not limited to: the ATO, financial institutions, charities, insurance providers, health professionals and Service NSW. The Tribunal has placed only limited weight on this evidence as while this evidence shows that the parties represent themselves to various agencies as living together, I am not satisfied there is sufficient probative, objective evidence to establish that this is the case.

140. The applicant has provided some photographs of the parties at what is described as the 'couple's home'. I have taken this to be the Cabramatta property. The Tribunal has placed limited weight on this evidence, due to the concern the photographs may have been taken for the purpose of supporting the applicant's claims. The Tribunal has formed this view on the basis of concern as to the reliability of the parties' evidence regarding their relationship circumstances.

141. *As to any sharing of the responsibility for housework*

142. The applicant and sponsor gave consistent evidence they share responsibility for housework, with the applicant having responsibility for meal preparation and washing their clothes, whilst the sponsor assists with cleaning dishes, hanging out the wet washing and also doing yard work. The Tribunal has placed only limited weight on this evidence, due to the lack of corroborative evidence in support of these particular claims.

143. *Assessment of the nature of the parties' household arrangements*

144. For the reasons discussed elsewhere in this decision, the Tribunal has concern as to whether the parties have given reliable evidence as to the nature of their household arrangements at the time of the Department's site visit to the Cabramatta property in March 2016 and at the time of the delegate's decision in July 2017. I am not satisfied that the evidence demonstrates the parties were cohabiting in a shared household at that time.

145. The parties are at the current time both in Vietnam. They have provided photos taken together and with relatives from their current trip to Vietnam and a photo of themselves at a Christmas celebration with friends and relatives at the Cabramatta property. I am not satisfied these photographs establish the parties' share a household together. I have concern as to the evidence the parties give regarding this and other aspects of their relationship. I have however given some weight to the parties providing the Cabramatta residential address to a range of instrumentalities and businesses, but only very limited weight to the photographs showing the 'couple's home' and to their evidence regarding their sharing responsibility for housework.

146. **The social aspects of the relationship**

147. *As to whether the parties represent themselves to other people as being in a de facto relationship with each other*

148. The applicant said she and the sponsor represent themselves to other people as being in a married relationship with each other. The sponsor gave consistent evidence with regard to this claim. The Tribunal accepts the parties registered their marriage with NSW Births Deaths and Marriages and has placed some weight on this evidence. The Tribunal accepts the parties have informed the ATO of their marital status and that they are both covered by the same Bupa private health insurance policy. I have placed limited weight on this evidence as businesses and government agencies do not question whether people are in a genuine

relationship in order for them to be consider a couple for tax purposes, or to be issued a joint health insurance plan.

149. *As to the opinion of the parties' friends and acquaintances about the nature of the relationship*

150. There are numerous statements from friends and relatives of the parties.
151. The applicant's parents state they support the parties' relationship and that they are happy to have the sponsor as their son-in-law as he is good to their daughter and has stable employment. They indicate they spent time with the sponsor when he visited Vietnam and also when they visited Australia. The sponsor's parents declare their support for the parties' marriage and indicate they are strongly against the allegation the sponsor received money for the marriage and state their family is financially wealthy and that they financially supported the sponsor to purchase the Cabramatta property.
152. The applicant's elder sister indicates she has known the sponsor for about seven years, including when they were work colleagues. She indicates she has regular contact with the parties and attests to the genuine nature of their relationship. The applicant's brother-in-law, the husband of her elder sister, attests to the genuine nature of the parties' relationship and also discusses the parties' plan to move to a granny flat at the rear of his home in Lurnea in 2016. The sponsor's elder sister attests to the genuine nature of the parties' relationship and that she has regular contact with both the applicant and sponsor over the telephone and periodic visits they make to her home in Melbourne.
153. I have placed no weight on the witness support statements from members of the parties' families as I do not accept the families statements as reliable because they are not objective sources of information and I am satisfied the declarations have been prepared to respond to concerns raised by the delegate in their decision record.
154. There are also declarations from two friends of the parties, which discuss social contact they have had with the parties and attest to their representing themselves as a couple. I have placed some weight on this evidence, as I view them to be a more objective source of information. There are also photographs and other materials suggesting the relationship is socially recognised, upon which I have placed some weight.
155. *As to any basis on which the parties plan and undertake joint social activities*
156. I am satisfied the parties have travelled together and spent time with members of their respective families. I am not however persuaded that this has not been for the purpose of facilitating their claims as to the genuine nature of their relationship.
157. There is little evidence the parties jointly plan other social activities, they claim to go out for meals and to shop together, but apart from this there is little indication they have shared interests or pastimes. I place no weight on the applicant's claim that online donations to the Salvation Army constitute a shared social, charitable activity on the part of the parties, as there is no actual activity beyond the act of making the online donation.
158. As to their more recent circumstances, the parties are both in Vietnam. The applicant did not elaborate on the circumstances whereby she travelled to Vietnam without a bridging visa permitting her to return to Australia. I accept the sponsor is also in Vietnam at the present time and have given some weight to this factor.

159. *Assessment of the social aspects of the parties' relationship*

160. I am satisfied that the parties represent themselves to some government agencies and businesses as a married couple and that they undertake some joint social activities. I am satisfied that in the opinion of some friends and a range of relatives the parties are in a genuine and committed relationship. I have placed some weight on the social aspects of the parties' relationship as an indicator that at the time of this decision they are in a genuine and continuing relationship.

161. The nature of the parties' commitment to each other

162. As to the duration of the relationship

163. I accept the parties have been married since May 2014. I have considered the claimed duration of the relationship but I have placed no significant weight on this as the cumulative evidence does not in my view demonstrate that the applicant and sponsor are in a genuine and continuing relationship.

164. As to the length of time during which the parties have lived together

165. I acknowledge that the parties claim to have lived together since November 2013. However, issues arising from the site visit to the Cabramatta property in March 2016 give rise to the concern that the parties have not lived together for the period of time they claim. They claim there was insufficient evidence of co-habitation at the Cabramatta property because they were in the process of relocating to the home of the applicant's elder sister at the time the Departmental officials conducted the site visit. I am not satisfied this is a credible claim and consider it to be made in an endeavour to explain the lack of evidence of the applicant residing with the sponsor at the Cabramatta property. I am not satisfied the parties have provided reliable evidence as to the length of time they have lived together and accordingly I place no weight upon this factor.

166. I acknowledge the documentary evidence that has been presented with the visa and review applications, including financial records, correspondence addressed to the parties at the same address, multiple statements from third parties and other evidence. However, such evidence does not satisfy me that the relationship is a genuine one. Such evidence does not overcome my concerns noted elsewhere. I am of the view that if the relationship were not a genuine one, it would still be possible to prepare, or obtain, a substantial amount of evidence of the kind that has been presented with the visa and review applications, such as the correspondence, photographs and evidence of joint activities, overseas travel and statements from third parties. In my view, such evidence may be available whether or not the parties are in a genuine relationship and whether or not both have a commitment to such a relationship. In my view the fact that the parties have taken steps to obtain such evidence does not necessarily reflect on the nature of their relationship. It may equally reflect on their commitment to prepare evidence that the applicant perceives to be necessary to support her claims.

167. As to the degree of companionship and emotional support that the parties draw from each other

168. I acknowledge the sponsor's evidence as to his concern the applicant is at present in a situation where she cannot easily access required medical treatment at [Hospital 1]. I have placed some weight on this understanding of her particular current circumstance. I am not however persuaded the available evidence demonstrates the parties provide each other with significant amounts of companionship or emotional support.

169. The Tribunal has placed limited weight on this factor because of the concern it has for the reliability of the parties' evidence as to their commitment to their relationship.

170. *As to whether the parties see the relationship as a long-term one*

171. The Tribunal notes the parties gave consistent evidence during the hearing that they see their relationship as long term. However, I consider the parties' evidence with regard to this and related issues to be unreliable as the Tribunal is not satisfied the applicant and sponsors are in a genuine and continuing relationship.

172. *Overall assessment of the parties' relationship*

173. The Tribunal is not satisfied the evidence establishes the parties have at the time of this decision a mutual commitment to a shared life as husband and wife to the exclusion of all others, or that they are in a genuine and continuing relationship. This is because, when considering the different aspects of the parties' relationship at the time of this decision, the Tribunal is not satisfied the parties have to any significant degree shared regular expenses, pooling of their finances or that they had any shared assets, debts or legal obligations to each other. There is limited credible evidence the parties have resided together, or that they have established a household together. There is evidence members of the parties' families and friends support the contention their relationship is genuine. There is limited evidence the parties plan or undertake social activities together, or that they emotionally support each other. They have no shared responsibility for the care of children.

174. The evidence supporting the contention the parties are in a genuine and continuing relationship are outweighed by the concern that the evidence provided by the parties and their relatives is not reliable and that there is evidence supporting the contention that the parties' relationship is a contrived relationship to facilitate the applicant gaining permanent residency in Australia.

175. Given these findings, the Tribunal is not satisfied that at the time the visa application was made, or at the time of this decision, the parties had a mutual commitment to a shared life to the exclusion of all others, or a genuine and continuing relationship, or that they live together or not separately and apart on a permanent basis.

176. The Tribunal is not satisfied that the requirements of s.5F(2) are met at the time of this decision. Therefore the applicant does not meet cl.801.221(2)(c).

177. Furthermore, the applicant has not claimed, and there is no evidence before the Tribunal, that the applicant meets the alternative criteria in cl.801.221(2A), (3), (4), (5) or (6).

178. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.

DECISION

179. The Tribunal affirms the decision not to grant the applicant a Partner (Residence) (Class BS) visa.

David Barker
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).